**(2005) 10 P&H CK 0056**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 1758 of 2005

Swastik Tubes (P) Ltd. APPELLANT

Vs

Haryana Financial Corporation Ltd. RESPONDENT

**Date of Decision :** 18-10-2005

**Acts Referred:**
State Financial Corporations Act, 1951 — Section 29(4)

**Citation :** (2006) 131 CompCas 95 : (2006) 142 PLR 211 : (2005) 4 RCR(Civil) 728

**Hon'ble Judges :** D.K. Jain, C.J;Hemant Gupta, J

**Bench :** Division Bench

**Advocate :** L.M. Suri and Deepak Suri, for the Appellant; Puneet Gupta, for the Respondent

**Final Decision :** Allowed

## Judgement

Hemant Gupta, J.—The petitioner, a company incorporated under the Companies Act, availed financial assistance in the shape of term loan of Rs. 39,34,000/- w.e.f. 11.01.1988 and another sum of Rs. 3,93,000/- in the month of June, 1994 from the respondent against the security of its property. The petitioner has also availed financial assistance in the shape of working capital loan from State Bank of India. The land, building and other assets of the company were kept in charge of the bank as well.

2. The Haryana Financial Corporation (hereinafter to be referred as "the Corporation") has taken over possession of the unit of the petitioner on 21.07.1999 on account of default committed by the petitioner in repayment of the loan amount. As per the petitioner, the total outstanding at the time of sale was a sum of Rs. 7,90,866/-. The property was put to auction on 02.12.1999. The same was sold for a sum of Rs. 47,50,000/- to M/s Bhateja Polymers (P) Ltd. The said purchaser entered into an agreement to sell dated 28.02.2000 and paid a sum of Rs. 11,87,500/-. The balance was to be paid by the purchaser alongwith interest in terms of the aforesaid agreement dated 28.02.2000.

 

3. It was the case of the petitioner that an amount of Rs. 39,59,114/-, i.e. excess amount after adjusting the dues of the company, was retained by the Corporation in most arbitrarily, monopolistic and unauthorised manner causing financial loss to the petitioner. The petitioner served a notice dated 12.11.2001 calling upon the Corporation to refund the said amount alongwith interest which the Corporation was charging from the petitioner but the Corporation has not given any reply to the said notice.

4. Learned Counsel for the petitioner has argued that though the unit was sold in public auction on 02.12.1999 and the respondents also executed an agreement of sale on 28.2.2000, the amount of Rs. 39,59,114/- was not remitted to the State Bank of India immediately thereafter. In fact, a sum of Rs. 26,82,726/-, was sent on 31.10.2001, Rs. 7,33,000/- on 31.03.2003, Rs. 5,42,178/- on 06.05.2003 and Rs. 7,70,421/- on 30.10.2004. Had the sale proceeds remitted to the State Bank of India immediately, the petitioner would have avoided the claim interest by the Bank on the outstanding against the petitioner. It is further pointed out that in terms of agreement dated 28.02.2000, the respondent is claiming interest on the balance amount payable by the purchaser in installments. It is, thus, contended that, on the one hand, the petitioner is made to pay interest to the bank on account of delay in remitting the amount to the bank and, on the other hand, the Corporation has earned interest on the amount by deferring payment payable by the purchaser. The petitioner has relied upon Section 29(4) of the State Financial Corporations Act, 1951 (hereinafter to be referred as "the Act") as well. The petitioner has pointed out that the petitioner has entered into one time settlement with the State Bank of India on 08.11.2004 vide Annexure "P-8. As per said settlement, a sum of Rs. 15,47,789/- was to be deposited by 30.11.2004, however, without any interest. As per terms of the settlement, the petitioner can also deposit the said amount alongwith legal charges and interest at prime lending rate i.e., 10.25% per annum with monthly rests latest by 30.10.2005.

5. The learned Counsel for the Corporation has submitted that the sale to the auction purchaser was on deferred payment basis. The agreement to sell dated 28.02.2000 was executed with the auction purchaser for repayment of balance amount of Rs. 35.65,500/-with interest at the rate of 16.5% per annum and in case of delay, 3% and 4% per, annum penal interest was payable. It is further stated that a total sum of Rs. 47,28,325/- has been remitted to the State Bank of India on behalf of the petitioner out of which a sum of Rs. 7,70,421/- is the interest amount received from the auction purchaser after deducting 5% handling charges amount to Rs. 3,34,965/-. It is the stand of the Corporation that the amount was remitted to the State Bank of India as and when the same was received from the auction purchaser. As per record of the Corporation, a sum of Rs. 39,57,904/-was payable by the Corporation to the petitioner as the total outstanding in the books of the Corporation was Rs. 7,92,096/-. The amount has been remitted to the State Bank of India in terms of the order passed by the Debts Recovery Tribunal and that the matter regarding payment of interest is

pending consideration before the Debts Recovery Tribunal as well.

6. Learned Counsel for the petitioner submitted that at last on the date of agreement entered by the Corporation with the purchaser, the amount for which the property was put to sale has to be credited to the account of the petitioner. Such agreement is without going into the question whether the Corporation is liable to credit the sale amount to the account of the borrower on the date of sale or on the date of agreement.

7. The primary issue required to be adjudicated upon is whether the petitioner is entitled to the credit of balance sale consideration on the date of agreement entered upon by the Corporation with the auction purchaser after adjusting all the dues and the incidental expenses of the Corporation.

8. The agreement by the Corporation with the auction purchaser is an independent agreement. The deferred payments in favour of the auction purchaser is an independent contract between the Corporation and the auction purchaser. Such deferred payment is a concession granted by the Corporation to the purchaser. Such deferred payment has to no effect on the sale consideration on which agreement has been arrived at by the Corporation with the purchaser. It is open to the Corporation to receive payment in one or more installments with or without interest. However, as far as borrower is concerned, once the sale of the property is confirmed, the Corporation cannot defer the credit of the sale proceeds on the basis of receipt of balance consideration by the Corporation from the auction purchaser. The sale having been completed, the petitioner is entitled to the benefit of sale consideration forthwith.

9. The delay in remitting the amount to the State Bank of India only after receipt of the amount from the auction purchaser is wholly unjustified and arbitrary. We find such action of the Corporation in not crediting the total sale consideration in the account of the petitioner after confirmation of sale as wholly unjustified action of the Corporation. Learned Counsel for the respondent could not point out any principle of law or precedent to support such an action of the respondent. Since, admittedly, the Corporation has retained the amount for more than four years, the Corporation is liable to pay interest at the same rate at which the Corporation has claimed interest from the petitioner.

10. Admittedly, the property sold by the Corporation was subject to second charge of the State Bank of India. As per tripartite agreement and the order of the Debts Recovery Tribunal, the amount of sale proceeds has to be remitted to the State Bank of India. Therefore, we direct the respondent Corporation to give credit of Rs. 39,57,504/- to the petitioner on the date of agreement itself and calculate interest payable to the petitioner at the same rate on which the Corporation has claimed interest from the petitioner prior to sale of the assets. It is needless to say that the Corporation shall be entitled to adjust handling charges amounting to Rs. 3,34,965/-. The interest so calculated and found payable shall be remitted to the State Bank of India within two weeks from today.

 

11. The writ petition, thus, stands allowed in the above terms.

 